

(3) While as crew members of aircraft, in aerial flight over Korea participating in actual combat operations or in support of combat operations.

(c) *Supply of the medal.* The Air Force is the Executive Agency for the ROKWSM. Therefore, requests for award of the medal should be forwarded to the following address: HQ, Air Force Personnel Center, DPPPRK, 550 C Street W, Suite 12, Randolph AFB, TX 78150–4612.

(d) *Order of precedence.* Order of precedence for non-U.S. service medals and ribbons is determined by date of approval. Accordingly, the ROKWSM will be worn after the Kuwait Liberation Medal—Government of Kuwait. For the majority of Korean War veterans, the medal will be worn after the United Nations Medal or the Republic of Vietnam Campaign Medal, if they served during the Vietnam Conflict era.

(e) *Description.* A gold six pointed star with rays, 37mm in diameter, superimposed by a white enameled star, 42mm in diameter, overall in center a green disc, 18mm in diameter, with the outline of the Vietnamese country with a red flame of three rays between North and South Vietnam. On the reverse of the medal is a circle with a designated band containing the word “CHIEN-DICH” (Campaign) at the top and “BOI-THINH” (Medal) at the bottom. Across the center of the circle is the word “VIET-NAM”. The ribbon is 1 $\frac{3}{8}$  inches wide and consists of the following stripes:  $\frac{1}{16}$  inch gherkin green 67183;  $\frac{3}{16}$  inch white 67101;  $\frac{5}{16}$  inch gherkin green 67183;  $\frac{1}{4}$  inch white 67101;  $\frac{5}{16}$  inch gherkin green 67183;  $\frac{3}{16}$  inch white 67101;  $\frac{1}{16}$  inch gherkin green 67183, and  $\frac{3}{16}$  inch white 67101.

#### § 578.133 Certificates for decorations.

(a) *Current issue.* A certificate will be presented with each award of an authorized military decoration. In no case will a commander issue a certificate indicating award of a military decoration other than on the standard DA certificate for the awarded decoration. Awards certificates will be issued without reference to numbered oak leaf clusters.

(b) *Completion.* Each certificate for award of the Legion of Merit (LM), Meritorious Service Medal (MSM),

Army Commendation Medal (ARCOM) and Army Achievement Medal (AAM) will be completed by the awarding commander and will bear his or her personal signature in the lower right corner. The Permanent Orders number and date are typed on the line on the left side of the LM, MSM, ARCOM, and AAM certificates. The grade, name, and branch of service, together with the place and dates of the act, achievement, or service of the recipient, will be inserted on the certificate in the appropriate spaces.

(c) *Replacement of Award Certificates—*

(1) *Veterans and retirees.* Veterans and retirees awarded U.S. military decorations to whom an appropriate certificate has not been issued may apply for such certificate by writing to the appropriate office indicated in § 578.66.

(2) *Active duty soldiers.* Active duty soldiers may request replacement certificate through command channels to the headquarters currently having authority to award the decoration for which certificate is required. Each request should include a copy of the orders announcing the award. The replacement certificate will be annotated with the original order number (for example, Per Permanent Orders XX-XX, January 1, 2000).

#### § 578.134 Certificate of Achievement.

(a) Commanders may recognize periods of faithful service, acts, or achievements which do not meet the standards required for decorations by issuing to individual U.S. military personnel a DA Form 2442 (Certificate of Achievement) or a Certificate of Achievement of local design.

(b) Certificates of Achievement will be issued under such regulations as the local commander may prescribe.

(c) If a locally designed Certificate of Achievement is printed for use according to this regulation, it may bear reproductions of insignia. In the interest of economy, the use of color will be held to a minimum.

(d) The citation on such certificates will not be worded so that the act of service performed appears to warrant the award of a decoration.

(e) No distinguishing device is authorized for wear to indicate the receipt of a Certificate of Achievement.

## Department of the Army, DoD

## § 581.1

### § 578.135 Certificate of appreciation to employers.

(a) To improve employer acceptance of the concept of military leave for participation in Reserve Component training and to encourage employers to adopt liberal military leave policies, certificates of appreciation may be presented to employers who have wholeheartedly and consistently cooperated in granting military leave to employees.

(b) The Commanding Generals, TRADOC, FORSCOM, State adjutants general, Army Reserve General Officer Commands, Corps, and the U.S. Army Military District of Washington are authorized to make this award.

(c) Certificates will be presented by the awarding commander or by an authorized representative, as appropriate.

### § 578.136 Certificates for badges.

Commanders authorized to award badges may issue, simultaneously, appropriate certificates of achievement to persons under their command who have qualified for the respective badges. The certificate also may bear a citation which will follow closely the prescribed eligibility requirements for the respective badge.

### § 578.137 Cold War Recognition Certificate.

Public Law 105-85, Section 1084, established a Cold War Recognition Certificate to recognize all members of the Armed Forces and qualified Federal government civilian personnel who faithfully and honorably served the United States during the Cold War Era from September 2, 1945 to December 26, 1991. The Cold War Recognition System homepage at <https://www.perscomonline.army.mil/tagd/coldwar/default.htm> announces the program and provides instructions for individual requests.

## PART 581—PERSONNEL REVIEW BOARD

Sec.

581.1 Army Disability Review Board.

581.2 Army Discharge Review Board.

581.3 Army Board for Correction of Military Records.

AUTHORITY: 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

### § 581.1 Army Disability Review Board.

(a) *General provisions*—(1) *Constitution, purpose, and jurisdiction of review board.*

(i) The Army Disability Review Board (called the review board in this section) is an administrative agency created within the Department of the Army under authority of section 302, title I, Act of June 22, 1944 (58 Stat. 284), as amended by section 4, Act of December 28, 1945 (59 Stat. 623), to review, at the request of any officer retired or released from active service, without pay, for physical disability pursuant to the decision of a retiring board or disposition board, the findings and decisions of such board. The review board is charged with the duty, in cases within its jurisdiction, of ascertaining whether an applicant for review who was separated from the service or released to inactive service, without pay, for physical disability, incurred such physical disability in line of duty or as an incident of the service. When the review board determines in an individual case within its jurisdiction that physical disability was so incurred, it is authorized in the manner prescribed by this memorandum, to reverse prior findings in such regard and to make such findings in lieu thereof as are warranted by the evidence or pertinent regulations. Such remedial action is intended primarily to insure that no officer separated from the service or returned to an inactive status without pay, for disability, shall be deprived unjustly of retirement pay benefits, or retired status and retired pay, as the case may be, by reason of erroneous findings.

(ii) The class of officers whose cases are reviewable shall include officers of the Army of the United States, other than officers of the Regular Army, who were discharged or released to inactive service under the conditions prescribed in paragraph (a)(1)(i) of this section; and former officers of the Regular Army who were wholly retired under section 1252, Revised Statutes.

(iii) The review board is authorized, upon timely application therefor, to review the proceedings and findings of boards referred to in paragraph (a)(1)(i)

of this section; and to receive additional evidence bearing on the causes and service-connection of disabilities in the cases of officers referred to in paragraph (a)(1)(ii) of this section, whose cases were the subject of findings by a retiring or disposition board, and who were separated from the service or released to inactive service, without pay, by reason of physical disability, whether denial of retirement or retirement pay benefits, as the case may be, was pursuant to the adverse findings of a board, or was pursuant to administrative action in a case where there was favorable action by a board.

(iv) In carrying out its duties under this memorandum such review board shall have the same powers as exercised by, or vested in, the board whose findings and decisions are being reviewed.

(2) *Application for review.* (i) Any officer desiring a review of his case will make a written application therefor on WD AGO Form 0258 (Application for Review of Army Retiring Board Proceedings) which may be obtained from The Adjutant General, Washington, DC 20310, Attention: AGPO-S-D.

(ii) No application for review will be granted unless received by the Department of the Army within 15 years after the date on which such officer was separated from the service or released to inactive service, without pay, for physical disability, or within 15 years after June 22, 1944, whichever date is the later.

(iii) The Adjutant General, upon receipt of an application for review, will note thereon the time of receipt thereof and will, in cases where the jurisdiction for review by the review board is established, assemble the originals or certified copies of all available Department of the Army and/or other record pertaining to the health and physical condition of the applicant, including the record of the proceedings and findings of all retiring and disposition boards in question and the records of all administration and/or executive action taken thereon. Such records, together with the application and any supporting documents submitted therewith, will be transmitted to the president of the review board.

(3) *Changes in procedure of review board.* The review board may initiate recommendation for such changes in procedures as established herein as may be deemed necessary for the proper functioning of the review board. Such changes will be subject to the approval of the Secretary of the Army.

(b) *Proceedings of review board—(1) Convening of review board.* (i) The review board will be convened at the call of its president and will recess or adjourn at his order. In the event of the absence or incapacity of the president, the next senior member will serve as acting president for all purposes.

(ii) Unless otherwise directed by its president, the review board will convene in Washington, DC, at the time and place indicated by him.

(iii) The review board will assemble in open session for the consideration and determination of cases presented to it. After the conclusion of such hearing, the review board will as soon as practicable thereafter convene in closed session for determination.

(2) *Hearings.* (i) An applicant for review, upon request, is entitled by law to appear before the review board in open session either in person or by counsel of his own selection. Witnesses shall be permitted to present testimony either in person or by affidavit. As used in the regulations in this part the term "counsel" shall be construed to include members of the Federal bar, the bar of any state, accredited representatives of veterans' organizations recognized by the Veterans' Administration under section 200 of the Act of June 29, 1936 (49 Stat. 2031), and such other persons who, in the opinion of the review board, are considered to be competent to present equitably and comprehensively the claim of the applicant for review. In no case will the expenses or compensation of counsel for the applicant be paid by the Government.

(ii) In every case in which a hearing is authorized, the secretary will transmit to the applicant and to designated counsel for the applicant, if any, a written notice by registered mail stating the time and place of hearing. Such notice shall be mailed at least 30 days in advance of the date on which the case is set for hearing except in cases

in which the applicant waives the right of personal appearance and/or representation by counsel. Such notice shall constitute compliance with the requirement of notice to applicant and his counsel. The record shall contain the certificate of the secretary that written notice was given applicant and his counsel, if any, and the time and manner thereof.

(iii) An applicant who requests a hearing and who, after being duly notified of the time and place of hearing, fails to appear at the appointed time, either in person or by counsel, or, in writing, waives his right to appear, thereby waives such right.

(iv) In the conduct of its inquiries, the review board shall not be limited by the restrictions of common law rules of evidence.

(v) In the case wherein it is advisable and practicable, the review board may, at the request of the examiner, or upon its own motion, request The Surgeon General to detail one or more medical officers to make physical examination of the applicant, if available, and report their findings resulting from such examination with respect to the matters at issue, either in person or by affidavit. When testifying in person at a hearing, such medical witnesses will be subject to cross-examination. Similarly the medical members of the board may examine the applicant, if available, and testify as witnesses concerning the results of such examination.

(vi) Expenses incurred by the applicant, his witnesses, or in the procurement of their testimony, whether in person, by affidavit or by deposition will not be paid by the Government.

(3) *Continuances.* The review board may continue a hearing on its own motion. A request for continuance by the examiner or by or on behalf of the applicant may be granted, if in the board's discretion, a continuance appears necessary to insure a full and fair hearing.

(c) *Findings, conclusions, and directions—(1) Findings, conclusions, and directions of review board.* (i) The review board will make written findings in closed session in each case. Such findings will include:

(a) Statement of complete findings of the retiring or disposition board and of administrative action subsequent thereto in the proceedings under review;

(b) A finding affirming or reversing the findings of such retiring or disposition board or such administrative action, specifying which of the findings or administrative actions are affirmed and which are reversed.

(ii) In the event the review board reverses any of such original findings or administrative actions, the review board will then make complete findings which shall include the affirmed findings of the original board or of administrative action subsequent thereto. Such complete findings shall include the following:

(a) Whether the applicant was permanently incapacitated for active service at the time of his separation from the service or release to inactive service.

(b) The cause or causes of the incapacity.

(c) The approximate date of origin of each incapacitating defect.

(d) The date officer became incapacitated for active service.

(e) Whether the cause or causes of the incapacity was or was not an incident of service.

(f) Whether the cause or causes of the incapacity had been permanently aggravated by military service.

(g) Whether such incapacity for active service was or was not the result of an incident of service.

(h) Whether the officer's incapacity was or was not incurred in combat with an enemy of the United States or whether it did or did not result from an explosion of an instrumentality of war in line of duty.

(iii) In the event the review board finds the officer permanently incapacitated for active service and that the incapacity was an incident of service, it will make an additional finding specifying the grade in which the officer is entitled to be retired or to be certified for retirement pay benefits.

(iv) The findings, conclusions, and directions of a majority of the review board shall constitute the findings, conclusions, and directions of the review board, and when made, will be signed by each member of the review

board who concurs therein, filed, and authenticated by the secretary.

(d) *Disposition of and action upon proceedings*—(1) *Record of proceedings.* (i) When the review board has concluded its proceedings in any case, the secretary will prepare a complete record thereof. Such record shall include the application for review; a transcript of the hearing if any; affidavits, papers and documents considered by the review board; all briefs and written arguments filed in the case; the report of the examiner; the findings, conclusions, and directions of the review board; any minority report prepared by dissenting members of the review board; and all other papers and documents necessary to reflect a true and complete history of the proceedings. The record so prepared will be signed by the president of the review board and authenticated by its secretary as being true and complete. In the event of the absence or incapacity of the secretary, the record may be authenticated by a second participating member of the review board.

(ii) All records of proceedings of the review board shall be confidential, except that upon written request from the applicant, his guardian or legal representative, The Adjutant General will furnish a copy of the proceedings of the review board, less any exhibits which it may be found impracticable to reproduce out which will include:

(a) A copy of the order appointing the board.

(b) The findings of the Army retiring board affirmed.

(c) The findings of the Army retiring board reversed.

(d) The findings of the review board.

(e) The conclusions which were made by the review board.

(f) The directions of the Secretary of the Army.

If it should appear that furnishing such information would prove injurious to the physical or mental health of the applicant, such information will be furnished only to the guardian or legal representative of the applicant. The Adjutant General, subject to the foregoing restrictions, will make available for inspection, upon request of the applicant, his guardian or legal representative, a record of the proceedings

of any case reviewed by the review board, but copies of the proceedings of any case heard prior to January 4, 1946, will not be furnished if such copies are not readily available.

(2) *Final action by review board.* When the review board has completed the proceedings and has arrived at its decision, the proceedings, together with the review board's decision, will be transmitted to The Adjutant General for appropriate Department of the Army action. The Adjutant General, in the name of the President of the United States, will indicate on the record of such proceedings and decision the President's approval or disapproval of the action of the review board, and will perform such administrative acts as may be necessary and thereafter will notify the applicant and/or his counsel of the action taken. Written notice, specifying the action taken and the date thereof, will be transmitted by The Adjutant General to the president of the review board to be filed by the secretary as a part of the records of the board pertaining to each case.

(e) *Rehearings*—(1) *Policy on the granting of rehearings.* After the review board has reviewed a case and its findings and decision have been approved, the case will normally not be reconsidered except on the basis of new, pertinent, and material evidence, which if previously considered could reasonably be expected to have caused findings and a decision other than those rendered as the result of the original review. An application for rehearing must be made within a reasonable time after the discovery of the new evidence, mentioned in this subparagraph, and the request for rehearing must be accompanied by such new evidence and by a showing that the applicant was duly diligent in attempting to secure all available evidence for presentation to the review board when his case was previously reviewed and that the reason for the delay in discovering such new evidence was not due to fault or neglect on the part of the applicant.

(2) *Application for rehearing.* Any officer desiring a rehearing of his case will make a written application therefor on WD AGO Form 0413 (Application for Review of Findings of the Army Disability Review Board) which may be